



## RESOLUTION

AUTHORIZING THE DIRECTOR OF BUDGET AND FISCAL SERVICES OF THE CITY AND COUNTY OF HONOLULU TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE UNITED STATES DEPARTMENT OF THE NAVY FOR THE PURCHASE OF UTILITY SERVICES

WHEREAS, Chapter 1, Article 8, Revised Ordinances of Honolulu, 1990, as amended, requires that any intergovernmental agreement or amendment thereof which places an obligation on the City or any department or agency thereof requires the prior consent and approval of the City Council; and

WHEREAS, Section 103D-102(b)(3) of the Hawaii Revised Statutes, exempts contracts between governmental bodies, including the federal government, from the requirements of Hawaii Revised Statutes Chapter 103D, the Hawaii Procurement Code; and

WHEREAS, the City currently operates White Plains and Nimitz Beaches in Kalaeloa pursuant to Navy License No. N6274299RP00105; and

WHEREAS, the United States of America, through the Department of Navy ("NAVY") intends to transfer or otherwise dispose of its utility systems in Kalaeloa; and

WHEREAS, until such time that the utility systems in Kalaeloa are transferred or disposed of, the NAVY is willing to continue delivering to the City utility services consisting of electricity and water for White Plains and Nimitz Beaches; and

WHEREAS, the intergovernmental agreement governing the terms and conditions for the provision of utility services is attached hereto as Exhibit A and by reference made a part of this Resolution; and

WHEREAS, the City and the NAVY have agreed to the terms and conditions of the Utility Sales Agreement; now therefore,

BE IT RESOLVED by the Council of the City and County of Honolulu that the Council consent to and approve the proposed Utility Sales Agreement attached hereto as Exhibit A and by reference made a part of this Resolution; and

BE IT FURTHER RESOLVED that the Director of Budget and Fiscal Services be hereby authorized to:

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## RESOLUTION

1. Execute an agreement with the NAVY in substantially the same form as the proposed Utility Sales Agreement attached hereto as Exhibit A; and
2. Execute any incidental or related agreements and documents in furtherance of the above so long as such agreements and documents do not incur additional obligations on the part of the City; and

BE IT FINALLY RESOLVED that the Clerk be directed to transmit copies of this Resolution to the Mayor, the Director of Budget and Fiscal Services, the Director of Parks and Recreation, the Department of the Navy, Navy Facilities Engineering Command, Hawaii, Services Acquisition Division (PRP233), 400 Marshall Road, Pearl Harbor, Hawaii 06860-3139, and to such other agencies as may be necessary.

INTRODUCED BY:

(br)

DATE OF INTRODUCTION:

SEP 01 2010

Honolulu, Hawaii

Councilmembers



DEPARTMENT OF THE NAVY  
NAVAL FACILITIES ENGINEERING COMMAND, HAWAII  
400 MARSHALL ROAD  
PEARL HARBOR, HAWAII 96860-3139

July 13, 2010

UTILITY SALES AGREEMENT NO. N62478-10-S-0065

THIS AGREEMENT is entered into as of April 1, 2010, between the UNITED STATES OF AMERICA, hereafter called the Government or Naval Facilities Engineering Command, Hawaii (NAVFAC HI), represented by the Contracting Officer executing this agreement, and the City and County of Honolulu, Department of Parks and Recreation, whose address is 94-230 Paiwa Street, Waipahu, HI 96797, hereafter called the Purchaser.

1. The Purchaser, agrees to purchase and receive from the Government utility service as follows:

**Description:** This Utility Sales Agreement is for the sale of electricity and water utility services between the Government (service supplier) and the Purchaser (service purchaser).

**Requirements:** The Government intends to transfer or otherwise dispose of its utility systems in the Kalaeloa area. Until such time that the utility systems in Kalaeloa are transferred or disposed of or earlier termination of this agreement, the Government shall deliver utility services up to the Delivery Point that conform to quality standards mandated in applicable federal, state and local regulations and statutes. Improvements requested by the Purchaser that would not otherwise be undertaken by NAVFAC HI to operate and maintain its system beyond the Delivery Point are the responsibility of the Purchaser. The Purchaser shall receive the utility service at the Delivery Point and provide payments to the Government as described below.

**Premises:**

White Plains and Nimitz Beaches, which are operated by the City, pursuant to Navy License No. N6274299RP00105, consisting of the following parcels of land:

- a. Parcel 1 - approx. 23.9 acres (White Plains)
- b. Parcel 2 - approx. 0.56 acres (Nimitz)
- c. Parcel 3 - approx. 4.8 acres (Nimitz)

EXHIBIT A

**Utility Delivery Point.** The delivery point is the physical location up to which NAVFAC HI utility services are provided to the Purchaser (after the system is repaired and restored to service operability). The delivery point will then become the delineation of responsibility between the Government and the Purchaser. Parties are responsible for the maintenance, repair and operation of the utility systems on their respective side of the delineated delivery points. The Government is responsible on the line side of the utility system up to the delivery points. The Purchaser is responsible for the remainder of the utility systems. The specific delivery points for the parcels identified under the "Premises" paragraph above, are as follows:

a. Electricity - At the building weather-head or meter socket where power is supplied to the building. The Government owns the meter during the term of this agreement.

b. Water - On the downstream side of the billing water meter.

**Metering:** Bills for electricity and water will be based on meters installed at Purchaser's expense. For the utility systems on its respective side of the delineated delivery points, Purchaser is responsible for all system repair and meter installation preparation necessary to provide metering and power to the parcels identified in the "Premises" paragraph above.

**Payment:** NAVFAC HI policy is payment for services rendered will be by credit card, unless exempted. NAVFAC HI will automatically bill the Purchaser's credit card account monthly. If exempted, the purchaser will be provided a monthly invoice and must make payment by check. Any discrepancies will be credited to the Purchaser's account in the following month.

**Rates:** The Purchaser will reimburse NAVFAC HI at the prevailing Government rate plus the prevailing private party surcharge calculated in accordance with the DoD Financial Management Regulations (FMR). The current Government rates plus the prevailing private party surcharge for FY10 are as follows:

Electricity: \$215.56/MWH

Water: \$2.29/K-GAL

The Purchaser will also reimburse NAVFAC HI at the prevailing Government rate, plus the prevailing private party surcharge (to

include labor and material costs) for minor work performed in connection with the furnishing of utility services, which includes meter calibration.

**Compliance:** All utility users shall comply with applicable federal, state and local laws, regulations, government-issued permits and Navy regulations, directives, instructions and permits relating to the use of the respective utility. All persons or entities desiring additional utility services from NAVFAC HI shall complete the necessary applications for the desired services and submit them for approval to NAVFAC HI. All utility users agree to comply with any and all Government directives, guidelines, and instructions issued in the event of emergency, security or health and safety concerns. The Government will exercise reasonable diligence to deliver utility services to its consumers and avoid shortages or interruptions in services, but will not be liable for any interruption, shortage, in-sufficiency of supply or any loss or damage occasioned thereby. Whenever, in the Government's opinion, special conservation measures or other restrictions on use are advisable in order to forestall or alleviate utility shortages the Government may restrict the use of such utilities by any measure or method of control. The Government reserves the right at any and all times to shut off utility services without notice for the purpose of making emergency repairs, extensions, or alterations, provided, however, the Government shall endeavor to provide prior reasonable notice of proposed shut off of utility services. Consumers dependent upon continuous utility services shall make other arrangements for emergency water storage or electrical generation. The Government will resume utility services as rapidly as possible. The Government reserves the right to assign this agreement in its sole discretion.

**Officer in Charge:** COMMANDING OFFICER, NAVAL FACILITIES  
ENGINEERING COMMAND, HAWAII

2. The utility services provided by NAVFAC HI are for use exclusively by the Purchaser, without rights to assign or sublet, at the Purchaser's premises and not for resale or redistribution. Government shall have the right to change said rates at any time on thirty (30) calendar days notice, or as authorized by Naval Facilities Engineering Command. Subject to Government's requirements, advance approval and supervision, the Purchaser shall be responsible for all expenses necessary to furnish, install, operate, and maintain all new facilities required for obtaining service, including suitable metering and regulating equipment and service connections to Government's

utility system. Such facilities shall be removed and Government premises restored to their original condition by the Purchaser, or by the Government at Purchaser's expense within a reasonable time after termination of this agreement. In compliance with 10 U.S.C. Section 2686, Purchaser agrees to purchase this service from any private or other public source when available and adequate.

3. The Government shall sell and deliver only such service as it may from time to time be willing to deliver and may, at any time, discontinue service hereunder. Either party may terminate this contract on 30 days written notice, provided, however, that during any period of national emergency Government may terminate on 24 hours notice.

4. The Government, its officers, agents and employees shall not be responsible for loss of or damage to property of the Purchaser or property of others, or for personal injuries to the Purchaser's officers, agents, servants or employees, or to other persons arising from or incident to the furnishing of, or the failure to furnish, the service provided for hereunder, nor for any other damage or loss of profit suffered by the Purchaser arising from or incident to the furnishing of, or the failure to furnish the service provided for hereunder and Purchaser shall hold and save Government, its officers, agents and employees harmless from any and all such claims or liabilities

5. No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this agreement, or to any benefit that may arise there from, but this provision shall not be construed to extend to this agreement if made with a corporation for its general benefit.

6. It is the responsibility of Purchaser to advise NAVFAC HI in writing the date when services are to be discontinued at least 90 calendar days prior to date of discontinuance. Utilities provided by this contract will continue to be billed to the Purchaser for the longer of the two following periods:  
(1) 90 calendar days after receipt of the discontinuance request or (2) until the date specified on the discontinuance notification.

7. This agreement supercedes all prior Utility Sales Agreements for the delivery points identified above.

THE UNITED STATES OF AMERICA

By: NAVAL FACILITIES ENGINEERING COMMAND, HAWAII

By: \_\_\_\_\_  
WAYNE T. JYO Date  
Contracting Officer

By: CITY AND COUNTY OF HONOLULU

By: \_\_\_\_\_  
RIX MAURER III, DIRECTOR Date

APPROVAL RECOMMENDED:  
DEPARTMENT OF PARKS AND RECREATION

By: \_\_\_\_\_  
LESTER K.C. CHANG, DIRECTOR Date

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
DEPUTY CORPORATION COUNSEL Date

CITY COUNCIL  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII  
C E R T I F I C A T E

**RESOLUTION 10-249**

Introduced: 09/01/10 By: TODD APO (BR)

Committee: PUBLIC SAFETY AND  
SERVICES

Title: RESOLUTION AUTHORIZING THE DIRECTOR OF BUDGET AND FISCAL SERVICES OF THE CITY AND  
COUNTY OF HONOLULU TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE UNITED  
STATES DEPARTMENT OF THE NAVY FOR THE PURCHASE OF UTILITY SERVICES.

Links: [RES10-249](#)  
[CR-333](#)

PUBLIC SAFETY AND SERVICES	10/07/10	CR-333 – RESOLUTION REPORTED OUT OF COMMITTEE FOR ADOPTION.			
COUNCIL	10/13/10	CR-333 AND RESOLUTION 10-249 WERE ADOPTED.			
ANDERSON	Y	APO	Y	CACHOLA	Y
GARCIA	Y	KOBAYASHI	Y	OKINO	A
				DELA CRUZ	Y
				TAM	Y
				DONOHUE	Y

I hereby certify that the above is a true record of action by the Council of the City and County of Honolulu on this RESOLUTION.

  
BERNICE K. N. MAU, CITY CLERK

  
TODD K. APO, CHAIR AND PRESIDING OFFICER